

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2020 CHRT 1
Date: February 11, 2020
File No.: T1248/6007

Between:

Levan Turner

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Border Services Agency

Respondent

Decision

Member: Edward P. Lustig

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I. Context and History

[1] This is a decision respecting the Complaint of Mr. Turner filed with the Canadian Human Rights Commission (the “Commission”) on February 8, 2005. Mr. Turner alleges that the Canadian Border Services Agency (the “CBSA”) discriminated against him contrary to section 7 of the *Canadian Human Rights Act* (the “Act”) on the basis of race, colour, national or ethnic origin, age and the perceived disability of obesity. The allegations stem from two CBSA job competitions in 2003 and 2004 for the position of a permanent (“indeterminate”) Customs Inspector that Mr. Turner applied for unsuccessfully. The first competition was for a job in Victoria that was called Selection Process Number 2003-2092-PAC-3961-7003 (“Victoria 7003”). The second competition was for a job in Vancouver that was called Selection Process Number 2003-1727-PAC-3961-1002 (“Vancouver 1002”).

[2] The Commission requested the Tribunal to institute an inquiry into the Complaint on August 24, 2007, pursuant to section 44(3)(a) of the Act.

[3] This is the third decision by the Tribunal on the merits of this Complaint. There were two previous hearings by different members of the Tribunal on the merits of this Complaint. In both previous cases, decisions were rendered by the Tribunal that were judicially reviewed by the Federal Court and in both cases the decisions of the Federal Court were appealed to the Federal Court of Appeal. As a result each of the two previous Federal Court of Appeal decisions the case was referred back to the Tribunal for reconsideration.

[4] The history of the two previous decisions of the Tribunal, the Federal Court and the Federal Court of Appeal is summarized at paragraphs 4 to 11 of my Ruling in 2017 CHRT 15. In that ruling I determined that the procedure for the reconsideration of the case by me would be by way of a hearing *de novo*.

[5] The hearing was held by me in Victoria over a period totaling 5 weeks. Many of the same witnesses who appeared at the first hearing also appeared at the hearing in Victoria. For them it was a long time between hearings and at some points difficult for some of them to recall clearly matters that took place many years earlier. It was a credit to them and

much appreciated by the Tribunal and the parties that they did their best. As so much time had passed, some of the witnesses from the first hearing were now retired and sadly some had passed on. It was agreed by the parties that the transcript of the evidence from the first hearing of a key witness who had passed on, Mr. Tarnawski, could be used in this case. At the parties' request, the hearing dealt only with the subject of liability, not remedies, on the understanding that should liability be found on the part of CBSA there would be a further hearing on remedies.

II. Background

[6] Mr. Turner was born on March 1, 1967. He is a black man and has assessed himself as being overweight. His family instilled in him an awareness of the history of black people in Canada. He attended the University of Toronto where he studied geography for a period of time. While in Toronto, he volunteered for service with the Toronto auxiliary police and received training at the Toronto Police College. He was commended for his service in that role and received a letter of reference from his platoon sergeant when he decided to move to Victoria.

[7] In Victoria Mr. Turner worked at several jobs involving security including at a shopping centre and at the Art Gallery and received training in security measures. When he applied for a job as a Customs Inspector in Victoria in December, 1997 he was given a positive reference from his supervisor at the Art Gallery who also commented that he "was a little overweight". He passed the Customs Inspector Test followed by a successful interview by Ms. Kathryn Pringle and Ms. Joanne Deans and was offered a term position as a Customs Inspector with Canada Customs and Revenue Agency (CCRA), the predecessor of CBSA, from May 4, 1998 to October 15, 1998.

[8] Mr. Turner was very happy to have been selected for the job. During the first couple of weeks on the job he received in-house training in interviewing travellers and collecting duties. He then began to work with experienced officers in the Marine section, first in the primary inspection line interviewing travellers to determine their admissibility as they arrived on ships at the port and then conducting secondary searches of vehicles and

travellers. He received no negative comments on his job performance during this first term of employment.

[9] Following his first term, Mr. Turner was hired back for another term as a Customs Inspector during the winter starting on December 29, 1998 for a three months term that was extended twice until October 17, 1999. He was assigned mainly to work in the Telephone Reporting Centre (TRC) clearing private vessels and planes for entry into the country over the telephone or referring them for secondary inspection but he was also assigned to Marine for primary inspection. He was tasked with training and guiding newer staff occasionally. He received very good comments from his supervisor for his work and for his positive personal attributes in his performance evaluation and was well thought of by colleagues who worked with him. He was recommended for rehire.

[10] Mr. Turner was rehired as a Customs Inspector on a term basis for a third term from May 1, 2000 to October 10, 2000. During this term he continued to be assigned mainly to the TRC with increasing responsibilities as well as some limited outside work. He received a positive performance appraisal without any negative comments.

[11] Mr. Turner was rehired again as a Customs Inspector for a fourth term from April 30, 2001 to October 9, 2001. During this term the events of 9/11 took place and as a result his term was extended to March 31, 2002. He continued to work mainly in the TRC as assigned but also in Marine as he had received training in "Officer Powers and Use of Force". Once again, his performance evaluation was positive with respect to both his work and his conduct. Colleagues commended him on his knowledge, commitment, work ethic, good humour and sunny disposition.

[12] During his fourth term Mr. Turner applied for an indeterminate position as a Customs Inspector in Victoria but was unsuccessful after being screened in for an interview. The selection board gave him a score of 60. This was below the required minimum score of 70 and was based upon the view of the selection board that he was lacking in enforcement experience. In part, this view was related to him using a four years old event in his examples of his enforcement experience rather than something more recent. In a post interview meeting with board member Ms. Kathleen Pringle, she

encouraged him to get more enforcement experience by working outside instead of working most of his time in the TRC. Initially, Mr. Turner was upset with this assessment and said that he would continue to work in the TRC but then he changed his mind and did seek and obtain assignments outside as well as suggested by Ms. Kathleen Pringle. Although, it was ultimately management's responsibility to assign officers to work locations, there was flexibility in assignments based upon operational needs.

[13] Mr. Turner was rehired again as a Customs Inspector for a fifth term from March 31, 2002 to October 14, 2002. He obtained more experience working outside during this term. His performance evaluations by his supervisor Mr. Trevor Baird were positive with respect to his work performance, skills, knowledge and behavior. The one area that Mr. Baird had some minor concern about in his mid-term evaluation regarding Mr. Turner bringing any of his concerns forward was noted as fully corrected at the end of the term evaluation. Mr. Baird gave evidence at the hearing that was not in his written performance evaluation of Mr. Turner at that time that he had the perception that Mr. Turner shied away from more difficult tasks but noted in his evidence that this was corrected by the end of the season and that Mr. Turner had followed the advice of supervisors to get more secondary inspection and enforcement experience during this term. Mr. Hughes, a colleague of Mr. Turner that season, gave evidence at the hearing that contradicted Mr. Baird's evidence about shying away from difficult tasks and gave positive evidence about Mr. Turner's work ethic and enforcement skills.

[14] Mr. Turner was rehired again for a term in Client Services from December 2, 2002 to April 26, 2003 and received a peer recognition award for his professionalism and positive and helpful attitude.

[15] In January of 2003, Mr. Turner applied for another indeterminate position as a Customs Inspector in Victoria but once again was unsuccessful after being screened in for an interview. This particular competition was called Selection Process Number 2002-1060-PAC-3961-7012 ("Victoria 7012"). He was screened in on the basis of his written responses of examples with respect to competencies in a number of prescribed situations.

[16] The interview in Victoria 7012 was essentially carried out by two superintendents Mr. Mark Northcote and Mr. Ron Tarnawski. These two gentlemen operated as a Recruitment Unit with expertise in hiring processes that was set up to help handle the multitude of hiring that was then taking place and to assist other supervisors with new features that were then being introduced in the hiring processes so they could handle interviews etc.

[17] Mr. Northcote in his evidence at the hearing was critical of the manner in which Mr. Turner responded in his written competencies with respect to dealing with a difficult situation involving an example involving a black American traveler. The traveler had been pre-identified as a risk and became irate during the inspection of the interior of his car by a canine and its handler. Mr. Turner claimed to have, more or less single-handedly, settled down the traveler diffusing a tense and potentially explosive situation when, according to Mr. Turner, no one else on the scene seemed able to do so. Mr. Northcote felt that this response was poorly written and that Mr. Turner had acted as too much of an advocate for the traveler.

[18] Mr. Northcote in his evidence at the hearing was also critical of the manner in which Mr. Turner responded in another case responded to by Mr. Turner in his written competencies with an example involving the determination of the value of some imported goods for which there was no bill of sale. In this case Mr. Turner claimed that he came up with the solution that did not occur to others on the scene of valuing the goods using a document that showed the insured value of the goods. Mr. Northcote felt that this response was not an acceptable way of valuing the goods.

[19] Mr. Turner was rehired again as a term Customs Inspector for a sixth term from April 28, 2003 to September 28, 2003. He worked during that season mainly in the TRC and also on occasion in Marine. His work was assessed at the end of the term by his supervisor Mr. Terry Klassen in positive written comments dated September 26, 2003, both in terms of Mr. Turner's performance and his behavior. Mr. Klassen recommended Mr. Turner for rehire. Mr. Klassen made no negative comments in this assessment directed to Mr. Turner's work ethic, sick days or family time record or anything else in the written appraisal.

[20] When Mr. Klassen met with Mr. Turner on September 26, 2003 to provide him with his written performance appraisal, he verbally advised him that there was a negative “perception” about his work ethic during the past couple of summers in that Mr. Turner shied away from taking the harder tasks in favor of taking the easier route. In evidence at the hearing, Mr. Turner said he was shocked and angry to receive this message from Mr. Klassen as this “perception” had never before been raised with Mr. Turner by anyone.

[21] Mr. Klassen decided a week later on October 2, 2003 to write an email (the “first email”) about his observations of the meeting he had with Mr. Turner on September 26, 2003. He sent the first email to other superintendents including Ms. Kathryn Pringle and Mr. Trevor Baird as well as the chief of operations Ms. Diane Kavelaars but did not share the first email with Mr. Turner. In evidence at the hearing Mr. Klassen said that he did this so that the supervisors could monitor Mr. Turner with these observations and so that they could keep them in the back of their minds.

[22] The first email is set out below. It includes negative commentary about Mr. Turner with respect to an alleged “perception” about Mr. Turner that he would take the easy way out of doing tasks like failing to cash out at the end of a shift and would avoid difficult and more demanding tasks involving work outside of the TRC. In evidence at the hearing Mr. Klassen was unable to identify exactly the source of the “perception” but stated that it was discussed at a management meeting. He was also unable to identify precisely the difficult tasks that Mr. Turner had avoided besides what he included in the first email below. He acknowledged in his evidence at the hearing that the “perception” had not been raised with Mr. Turner prior to his interview with Mr. Klassen. Mr. Turner gave evidence at the hearing that while he got along well with Mr. Klassen he had in the past on occasion referred to Mr. Turner as “rat bastard” which Mr. Turner took as a play on the words “fat bastard” from a Mike Myers’ movie “Austin Powers”. Mr. Klassen testified that he had no clear recollection of using that term to describe Mr. Turner and that he was not familiar with the movie it was supposedly taken from.

From: Klassen, Terry
Sent: October 4, 2003 9:09 AM
To: Pringle, Kathryn; Pinniger, Rick; Gibbons, Mara; Baird, Trevor
Cc: Kavelaars, Diane

Subject: FW: talk with Levan after assessment

Here is the discussion I had with Levan after delivering his assessment. Parts of it may not seem relevant to you but serve as reminders to me. The long and short of this whole document was that he was shocked that he was perceived in this manner and that he did not see himself as someone who sloughs tasks off that are harder as this was not part of his nature. I asked him to take a close look at himself next year to ensure he was not dodging harder tasks or seeking the easy path. I turn he asked that we give him ongoing feedback on how he is doing in our eyes. The conversation went very well and without conflict.

Terry

---Original Message---

From: Klassen, Terry
Sent: October 3, 2003 5:01PM
To: Klassen, Terry
Subject: talk with Levan after assessment

Levan's assessment was delivered and he was appreciative of that. I went *on* to ask him what he felt was the toughest part of the job for him and he said it was dealing with Kenmore Air and their variation from the schedule and that no one dealt with it over the summer. I rephrased the questions and asked in the day to day duties what do you find the hardest. What I was hoping is he would open up that he found secondaries or some of the more physical tasks difficult and that he would shy away from them. His answer to the rephrased question was something else (I do not recall).

I then went to the point and started talking about how he is perceived i.e. how he sometimes shies away from the harder tasks, or knows the right procedure (a difficult task) to take but ask to supt for "advice" hoping the supt will use their discretion and go the easier way. It was also pointed out how other inspectors had complained that he had left case outs for others to do instead of doing them on his shift. These points were delivered in a very compassionate way and Levan responded with shock but not defensively. He kept on saying this is contrary to his work ethic / nature and the way he see's the world. He asked why he had not been talked to about this in the past and I responded I did not know and thus it was not included on his assessment as he was not made aware of it and could not respond or take corrective action. He felt if supts would have come to him at the time of their

concern he could have explained his actions so that it would not be seen as him sloughing things off.

I went on to explain that this perception has been around for a couple of summers and that it was something he would need to work on next year by taking on those difficult task and being cognisant of his decisions so that he is not taking the easy way out. I reminded him that this is not how he is perceived all the time but rather I see him as a very good communicator that works well with the public and continues to grow in knowledge. We then broke off into his frustration in learning and that he is not being taught enough, ...like how to look up things in the D series or tariff. I responded by saying a lot of these learning tasks need to be taken on by the employee. I reminded him that supts work solid from the start of the day to its conclusion and that we all have found little time to do extra training but reminded him that I had done use of force training three different times; firearms three times and an evening of learning how to complete a B3 properly. I told him it was my wish at the beginning of the year to do a learning session each week but that became too daunting. I reminded him that for each hour of class room it is 2 to 4 hours of prep. Levan then suggested the idea of term learning circles, so that they as a group would pick a topic for each evening shift and explore it length till all understood it properly. I said that was a fantastic idea and would like to see him explore this. We also talked about revamping the term refresher course to include an email prior to coming back or at the end of season asking what they would like to learn in refresher training and work part of refresher around some of those suggested topics. Again I said that was a good idea and that I thought he should include that in his year end exit survey.

I asked him why he liked working at cruise ships when working aircraft, he went on to say it was a new work environment and different work. I said it also has the appearance of taking the easy road instead of coming back to help at Clipper. He assured me that this was not the case. He went on to talk about how he loves to use the different computer data bases and wishes to learn them all. He was also concerned that terms did not know the TRC and why could he not train them by making staged calls to them and have them action it in the training mode of the TRC. He went on to say that is how he trained other TRC newbees. I said that was something we could explore next year. But that terms at this point will not be assigned to the TRC as we need all designated bodies out in marine.

We closed up the one and half hour discussion with me emphasizing that he needs to be cognisant that the image he is presenting is one of jumping in with both feet and not looking for an easy solution. He also asked that I impart to the other supts that they should feel free and easy to come and discuss with him when something is not sitting right as he does not see this sloughing as part of his work ethic or nature.

I believe that there is a portion of Levan that does look for the easy way out and was concerned that he did not see that within himself or if he did, not admitting it. This is something to be followed closely next year.

[23] On October 12, 2003 Mr. Klassen sent another email (the "second email") to the same managers except Ms. Kavelaars who he had sent the first email to. The second email is set out below. It includes negative commentary about Mr. Turner with respect to Mr. Turner allegedly having a health issue and abusing sick and family leave. The only specific evidence given at the hearing respecting the use by Mr. Turner of sick time and family leave related to him spending time helping his disabled partner who had a medical condition as set out below. This issue was not formally raised before by management with Mr. Turner and he testified at the hearing that he had previously advised management about the health situation with his partner.

From: Klassen, Terry
Sent: October 12, 2003 12:05 AM
To: Pinniger, Rick; Gibbons, Mara; Baird, Trevor; Pringle, Kathryn
Cc: Klassen, Terry

Subject: talk with Levan part two

I forgot an important part of the conversation and it was regarding his attendance. I told him we were concerned that either his health was an issue or he was abusing his sick leave. I showed him the leave summary reports that showed a steady increased use of sick leave and family related leave over his years of employment with us.

His only comment regarding the sick leave was that starting next year his sick leave will be back at zero and he said something like it should not be a problem next year.

Regarding the family leave, he wanted me to remind me that his girlfriend (common-law) was off on disability and that a lot of his time off was taking his girl friend to medical tests or appointments. He also said his girl friends disability leave is coming to an end and she should be back at work soon. Hence next years family related leave should be lower. I said I would remind the other supts about his girl friends medical condition.

I remember getting a phone call message on the supts line that came in a 0130 hrs the night before a dayshift with Levan. He was phoning to say he would be off on a Family Related leave.

This does not seem to correlate with medical appointments or bad planning of not remembering to tell us in advance so we could make adjustments to the schedule if required. This remembrance came to me after our talk so I could not ask him about it.

terry

[24] Mr. Turner applied for the indeterminate position of Customs Inspector in Victoria 7003 prior to the end of his sixth term. Victoria 7003 was a competition open to anyone regardless of their past experience and there were many applicants. In order to treat all applicants equally, the evaluation of candidates focused on their written competencies and, if screened in for an interview, their performance in the interview. He was screened into the competition on the basis of the same written competencies that he had used in the prior competition in Victoria referred to in paragraph 15 above. Mr. Turner was interviewed by Superintendents Baird and Kathryn Pringle who both had reviewed his performance positively in the past and who both had received the first and second emails before the interview. Mr. Baird testified at the hearing that he did not read the emails but Ms. Pringle testified that she probably did. Ms. Janet Sabo who is the spouse of Mr. Baird and also works for CBSA also attended the interview as an observer.

[25] Mr. Turner was unsuccessful in Victoria 7003 based on his failure to pass the competencies related to effective "Interactive Communication" and "Teamwork and Cooperation". He was found by the board to have embellished facts in his resume respecting his experience as an auxiliary police officer in Toronto although he was not asked about this at the interview and denied in his evidence at the hearing that he had ever portrayed himself as a regular police officer. He was also found to have embellished the number of bond audits he was involved in although there was no evidence that he performed any more bond audits than what he claimed to have performed with his team that season.

[26] Also, the selection board in Victoria 7003 felt that, in some of the examples Mr. Turner used in his written competencies, he tried to embellish his contributions to the events described to make himself look good while diminishing the roles of others involved, making them not look good. This was not something raised with Mr. Turner during his interview by selection board members but came out in the evidence of the board members

who testified at the hearing. The guidelines for assessing candidates allowed and even encouraged the use of critical commentary if the candidate felt that it was accurate to describe an event. Mr. Turner in his evidence maintained that what he had written in the competencies and what he said in the interview was accurate about the circumstances of the events he described.

[27] In one of his written competencies involving the black American traveler in a difficult situation, Mr. Turner used the name of Ms. Nina Patel as a validator for this event as she was the supervisor on the scene of this event as it was described by Mr. Turner. Mr. Turner also used the name of Mr. Ken Moore as a validator for this event as he was the dog handler in this event as it was described by Mr. Turner. Essentially, in his written competency for this event Mr. Turner described Ms. Patel as a supervisor who was unable to control the difficult situation as it unfolded. He described Mr. Moore as a dog handler whose manner of actions towards the traveller in having the dog inspect the trunk of the traveller's vehicle incensed the traveller making an already difficult situation worse. Mr. Turner described himself in the event as the person who was able to diffuse the difficult situation by taking the appropriate steps to calm down the traveller and straighten matters out.

[28] Ms. Patel was not contacted by any member of the selection board in Victoria 7003 before Mr. Turner was disqualified from that competition after his interview but was contacted by Mr. Baird about a month afterwards by telephone. Mr. Moore was never contacted by any member of the selection board to validate the event. Ms. Patel, who is now a Director at CBSA and is a person of color, gave evidence at the hearing that contradicted Mr. Turner's view of how things happened in the event, particularly with respect to his view that others including her were not able to properly react to the situation. Mr. Moore, who is now an instructor at the CBSA College in Rigaud Quebec, also gave evidence at the hearing that contradicted Mr. Turner's description of his role in the event and contradicted Mr. Turner's view that others were not acting properly or able to control matters while Mr. Turner was the only person who was able to diffuse the difficult situation.

[29] Mr. Turner's sixth term as a Customs Inspector was his last as he was informed prior to the next season that the criteria for hiring had changed and he would not be offered another term.

[30] Mr. Turner applied for Vancouver 1002 on June 15, 2003. It was also a competition open to anyone regardless of their past experience and there were many candidates. Mr. Turner was living in Victoria at the time and the job posting informed the competition that it was open to anyone "residing or working west of the Canadian Rocky Mountains." However, Vancouver 1002 included an eligibility restriction for applicants that was different than Victoria 7003. The restriction stated that "Applicants who have been interviewed for this position since January 1, 2002, will not be eligible for this process." Mr. Turner in his evidence at the hearing said that he interpreted this to mean that the competition was closed to persons who had, since January 1, 2002, applied for a Customs Inspector position in the Vancouver district, as in all of his previous applications in Victoria the competition had been restricted to candidates in the Victoria area, where the positions were located. Mr. Hughes in his evidence at the hearing confirmed that he had the same understanding as Mr. Turner.

[31] Mr. Turner was interviewed by Mr. Northcote and Mr. Tarnawski for Vancouver 1002. They were familiar with Mr. Turner through the interview described in paragraph 16 above. In fact, when Mr. Tarnawski encountered Mr. Turner at the interview for Vancouver 1002 he allegedly said that he remembered his "voice and presence" from an earlier interview in Victoria. In the transcript of Mr. Tarnawski's evidence from the original hearing introduced into evidence in this hearing, Mr. Tarnawski, in answering a question about whether Mr. Turner might have stood out for him because he was a large black man, Mr. Tarnawski responded as follows: "Well I didn't interview, I don't think a whole pile of people that would meet the same physical characteristics as Mr. Levan Turner."

[32] Mr. Northcote gave evidence at the hearing that the eligibility restriction for Vancouver 1002 was intended to exclude candidates for the position of Customs Inspector who had previously been found unqualified since January 1, 2002, in any competition for that position, regardless of where they resided or worked. The rationale for this according to Mr. Northcote was to provide recently unsuccessful candidates with sufficient time to

gain the experience and expertise needed to be successful the next time they applied and also try to streamline the process by limiting the very large number of candidates. Mr. Northcote in his evidence at the hearing acknowledged that the restriction could have been worded differently or better. In his evidence at the first hearing, Mr. Tarnawski indicated that the restriction in Vancouver 1002 would not have been applied to a person from Victoria who had been found qualified in another competition since January 1, 2002. Mr. Tarnawski also acknowledged that the wording had caused problems for CBSA.

[33] Mr. Turner submitted virtually the same written competencies in Vancouver 1002 that he had used in Victoria 7003 and Victoria 7012 and was initially screened in for an interview by Mr. Northcote, Mr. Tarnawski and Ms. Morin on the basis of his written competencies. However, after an initial interview, Mr. Turner was found unqualified as a result of the board determining that he did not meet the eligibility restriction and was not allowed to proceed in the interview process. According to Mr. Turner's evidence at the hearing, he learned about the disqualification through a telephone call he received from Ms. Morin who told him that he was disqualified as a result of having interviewed for a Customs Inspector position unsuccessfully in Victoria during the eligibility restriction term. Following her call, Mr. Tarnawski called Mr. Turner to explain that the eligibility restriction was meant to disqualify any applicants for the position of Customs Inspector who had unsuccessfully interviewed previously during the restricted term, A follow up letter to Mr. Turner from Messrs. Northcote and Tarnawski dated June 1, 2004 and postmarked June 3, 2004 indicated that the eligibility restriction applied to persons who had previously interviewed for the position of Customs Inspector in the Metro Vancouver, Pacific Highway and Vancouver Airport area during the restricted term. The letter invited a written response by June 9, 2004.

[34] Mr. Turner received the letter on June 7, 2004 and wrote a letter back to the address specified seeking clarification for the explanations he had received about the eligibility restriction in the calls and letter. His letter was postmarked June 8, 2004 and stamped received on June 11, 2004. The request was marked as "Received late. No feedback provided". The same selection board had in the same competition accepted

written submissions after the deadline in other cases as long as they were postmarked by the deadline.

[35] There was evidence at the hearing that there had been candidates who had been screened out of Victoria 7003 both before any interview, on the basis of their written competencies as well as candidates found unqualified after an interview in that competition, who were then permitted to continue to an interview after being screened in as applicants in Vancouver 1002.

[36] One of these candidates was Mr. Blaine Wiggins who testified at the hearing. Like Mr. Turner, Mr. Wiggins was screened into Victoria 7003 and was interviewed but found unqualified. Like Mr. Turner he also applied for Vancouver 1002 and was screened in on the basis of his written competencies. Unlike Mr. Turner he was allowed to proceed to an interview without the issue of the eligibility restriction being raised but was determined to be unqualified as a result of his interview. At the hearing, Mr. Wiggins testified that during the interview in Vancouver 1002 he was asked questions by the selection board (that included members that had found Mr. Turner ineligible) about his aboriginal background that he felt were off track and inappropriate. After his unsuccessful interview he took up his concerns about this line of questioning in response to the letter he received from Mr. Northcote advising him of the result of the interview and inviting him to submit any request for further information in writing by July 5, 2004. Mr. Wiggins hand delivered his request for further information but got no response from Mr. Northcote who testified at the hearing that the letter was received late. Mr. Wiggins testified that he followed his letter up with a further letter to the Pacific Regional Director and received a response that he would be provided feedback from the Recruitment Unit. He did receive a call but felt it was unresponsive to his concerns.

[37] During his years with CBSA Mr. Turner was one of very few black people employed as a Customs Inspector in Victoria. Ms. Lorna Thompson a black woman who was screened into a Customs Inspector competition and passed the interview but was later determined to be unqualified as a result of failing the Use of Force training in Rigaud, Quebec testified at the hearing. She claimed that during the training one of her instructors Mr. Brian McKenna used comments that she felt were stereotypically negative

towards blacks in an attempt to emulate a potentially dangerous traveller at the border. She claimed that she found his behaviour troubling and bigoted and informally complained about it but received no response to her complaint. In transcript evidence submitted at the hearing from the testimony of Mr. McKenna from the original hearing, he denied the claim by Ms. Thompson that he had used a racist stereotypical negative example in his training or that he was bigoted.

[38] Mr. Ross Fairweather who was the Chief of the Vancouver International Airport testified at the hearing about a careers presentation he gave in Victoria at this time where he allegedly told attendees that if they were interested in customs and under 35 they should move to Vancouver. He stated that if that was said it was not meant to disadvantage Mr. Turner who would have been 37 when he was disqualified from Vancouver 1002, but rather to encourage young, mobile people to choose a career in Vancouver in customs. There was evidence at the hearing about the bridging program that the CBSA ran to fast track students working as Student Customs Inspectors into indeterminate positions without the need to go through the selection process that Mr. Turner as a term employee went through. Some of the students bridged who were supposed to be “high flyers” according to Mr. Northcote turned out to have a great deal less experience than Mr. Turner by the time that Vancouver 1002 took place.

[39] Since his last term position ended with CBSA Mr. Turner has worked consistently with Service Canada first as a term employee and then as an indeterminate employee, however in his evidence at the hearing he indicated that his experiences in not being hired in either of the competitions that his complaint relates to were and still are hurtful to him.

III. Issue

[40] The issue to be determined in this case is whether the CBSA discriminated against Mr. Turner, contrary to section 7 of the Act, on the basis of his race, colour, national or ethnic origin, age and the perceived disability of obesity by disqualifying him from the two job competitions for the indeterminate position of Customs Inspector in Victoria 7003 and Vancouver 1002?

IV. Legal Framework

[41] Section 7 of the Act reads as follows:

7 It is a discriminatory practice, directly or indirectly,
 (a) to refuse to employ or continue to employ any individual, or
 (b) in the course of employment, to differentiate adversely in relation to an employee,
 on a prohibited ground of discrimination.

[42] Sections 3(1) and 3.1 of the Act reads as follows:

3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

3.1 For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.

[43] A complainant alleging an infringement of the Act bears the onus of showing a *prima facie* case of discrimination. The applicable standard of proof is the civil standard of the balance of probabilities. To discharge the onus a complainant must establish a “connection” to a prohibited ground under the Act. (see *Quebec (Commission des droits de la personne et des droits de la Jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 at para 65 (*Bombardier*)).

[44] A *prima facie* case is “one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent-employer.” (see *Ontario Human Rights Commission and O’Malley v. Simpsons-Sears*, [1985] 2 SCR 536 at para 28.)

[45] In order to prove a *prima facie* case of discrimination, the test that complainant must generally satisfy is that: i) the complainant has one or more characteristics protected from discrimination under the Act such as race, colour, national or ethnic origin, age or disability; ii) the complainant was subjected to adverse treatment or disadvantage; and iii) one or more of the complainant’s protected characteristic(s) was a factor, but not

necessarily the only factor, in the adverse treatment or disadvantage. (see *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30 (CanLII) at para 69, citing *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 SCR 360 at para 33 and *Bombardier*, at paras 60-63.)

[46] In determining whether a complainant with protected characteristics has satisfied the second two parts of that test in a case under section 7 of the Act involving a complaint of discrimination in a selection board's decision, a Tribunal is not required to assess the complainant's qualifications and experience in absolute terms, not even in relation to other candidates. The Tribunal is not sitting as a selection board in such a case, nor is it exercising appellate jurisdiction in respect of the selection board's decision. Rather, the Tribunal is required to assess the decision-making process of the selection board in order to determine whether the complainant was adversely impacted by the decision and whether the complainant's protected characteristics or a combination thereof played a role in the selection board's decision-making process. (see *Turner v. Canada Border Services Agency*, 2018 CHRT 1, at para. 40).

[47] The Tribunal has developed tests for assisting its determination of a *prima facie* case in employment situations, including whether the complainant was qualified for the job, was not hired for it, and someone no better qualified, but who lacked the protected characteristics was hired instead. However, there is no specific evidence required to prove a *prima facie* case as the test needs to be kept flexible to recognize that discriminatory practices can take new and subtle forms (see *Canada (Canadian Human Rights Commission) v. Canada (Attorney General representing the Canadian Armed Forces)*, 2005 FCA 154 at paras 10 and 25-30 (*Morris*)).

[48] A complainant is not required to prove that the respondent intended to discriminate in order to establish a *prima facie* case as some discrimination involves multiple factors and is unconscious. Indeed, it is often said that discrimination is not a practice that would ordinarily be displayed openly or even practiced intentionally. As a result, the Tribunal must examine all of the circumstances, invariably often involving circumstantial evidence, that both support and undermine the allegation of discrimination, to determine if there exists what the Tribunal has called the "subtle scent of discrimination". (see *Bombardier* at paras. 40-41; *Basi v. Canadian National Railway Co.* (1988), 9 CHRR D/5029; *Peel Law*

Association v. Pieters, 2013 ONCA 396 at paras 72 and 8; *British Columbia (Public Service Employees Relations Commission) v. BCGSEU*, [1999] 3 SCR at para 29).

[49] Racial stereotyping bred by social conditioning and encouraged by popular culture and the media, can affect decision-making. This can happen in an employment context, by causing a decision maker who has accepted the stereotype as true, however unconsciously, to opt for an easy solution based upon an irrational stereotype instead of a more difficult solution based upon a rational conclusion reached through the processes of thought, and listening and evaluation. Racism, including anti-black racism, is present in society in Canada not only in overt forms but also subconsciously among many people and institutions who operate on the basis of negative racial stereotypes including those directed towards blacks and in particular black males. (see *R v. Parks*, [1993] OJ No 2157 at paras. 42-3, 47, 54 and 60-61 (*Parks*); *Knoll North America Corp v. Adams*, 2010 ONSC 3005 at paras 20, 32-37 and 48 (*Knoll*); *Sinclair v. London (City)*, 2008 HRTO 48 at paras 17-18 and 53-54; *Shaw v. Phipps*, 2012 ONCA 155 at paras 33-36.)

[50] Some of these negative racial stereotypes involving black men are they are unintelligent, lazy, incompetent and dishonest, leading to difficulties for them in employment situations. (see *Balikama v. Khaira Enterprises*, 2014 BCHRT 107 at paras 585-586; *Francis v. BC Ministry of Justice (No. 3)*, 2019 BCHRT 136 at paras 300-303 (*Francis*); *Bageya v Dyadem International*, 2010 HRTO 1589 at para 130; *Chopra v. Canada (Department of National Health and Welfare)*, [2001] CHRD No 20 at paras 274-275.)

[51] Obese and overweight persons also may suffer discrimination in the workplace from negative stereotyping based on the perception that they are lazy and in poor health in spite of actual performance and lack of poor attendance. (see *Quebec (Commission des droits de la personne et des droits de la Jeunesse) v. Montreal (City)*, 2000 SCC 27 at paras 76-80; *Hamlyn v. Cominco Ltd.*, [1989] BCHRD No 29 at paras 10 and 20.)

[52] Discrimination can be caused by multiple intersecting grounds. The analysis of a primary ground of discrimination such as race must not ignore other grounds in the complaint, such as disability and the possibility that compound discrimination may have

occurred as a result of the intersection of these grounds. (see *Turner v. Canada (Attorney General)*, 2012 FCA 159 at paras 48-49.)

[53] If a complainant establishes a *prima facie* case, the onus shifts to the respondent to show by way of a reasonable explanation that either discrimination did not occur or that the conduct was not discriminatory. (see *Morris* 2005 FCA at para. 26; *A.B. v. Eazy Express Inc.*, 2014 CHRT 35, at para. 13.) Any such explanation must be credible, and not a mere pretext for discrimination. (see *Bombardier* at para. 37.)

[54] Discrimination need only one factor in the respondent's decision not to hire or promote for a complainant to be successful under the Act. The Tribunal is tasked with discerning whether discrimination was a factor in failure to hire. To do so the Tribunal must consider all of the circumstantial evidence, make findings of fact and determine whether the inference that may be drawn from the facts support a finding of discrimination on the balance of probabilities. However, there has to be a nexus between the conduct under scrutiny and a prohibited ground of discrimination. The nexus can be inferred through the circumstantial evidence, but the inference of discrimination must be more probable than other possible inferences. In making the inference, the fact at issue must be proved by other facts. Each piece of evidence need not alone lead to the conclusion. The pieces of evidence, each by themselves insufficient, are combined to provide a basis for the inference that the fact at issue exists. The finding of discrimination by the Tribunal can be based upon circumstantial evidence as well as direct, anecdotal and statistical evidence. (see *Khiamal v. Canada*, 2009 FC 495 at paras 80-84 (*Khiamal*)).

V. Parties' Positions

A. Complainant's Position

[55] Mr. Turner feels that he was discriminated against, on the grounds of his race, colour, national or ethnic origin, perceived disability and age and the cumulative intersecting impacts thereof, by the members of the selection boards in their decisions in both of the competitions—in Victoria 7003, where he was first screened in and then found

unqualified after an interview and in Vancouver 1002 where he was first screened in and then excluded from proceeding further based on an eligibility restriction.

[56] He believes that there was both direct overt evidence of discrimination in the workplace and at the interview as well as circumstantial evidence of discrimination in the form of “red flags” that he says are the hallmarks of a pretext for discrimination from which an inference should be drawn that the members of the selection board’ minds were affected, perhaps unconsciously, with unfounded, pernicious and prejudicial stereotypical bias against him when they made their decisions.

[57] Mr. Turner argues that in both selection processes, as a large overweight black male, he was singled out for adverse differential treatment, despite demonstrating that he was qualified for the indeterminate position of Customs Inspector, a job he had done without any real complaints from his employer for six successive seasons as a term employee.

[58] With respect to direct overt evidence of discrimination, Mr. Turner alleges that Mr. Klassen called him “rat bastard” in the workplace that he claims was a play on “Fat Bastard”, one of the fictional characters in the Mike Myers “Austin Powers” films. Fat Bastard was a fat unsavory character in the films. Another example of overt evidence of discrimination in the workplace, according to Mr. Turner, is the alleged comment by Mr. Fairweather to attendees at a careers presentation that if they were interested in customs and under 35 years of age they should move to Vancouver.

[59] Mr. Turner also cites as overt discrimination a comment made by Mr. Tarnawski in his interview in Vancouver 1002 where he allegedly recognized Mr. Turner’s “voice and presence” from a previous interview and then disqualified him. Mr. Turner was the only black male working as a Customs Inspector in Victoria and in evidence from a previous hearing Mr. Tarnawski had admitted that he hadn’t “interviewed a whole pile of people that would meet the same physical characteristics as Levan Turner”.

[60] Mr. Turner argues that the above described direct overt actions show an atmosphere in the workplace and at the interview where his size, his race and his age

invoked negative unfounded stereotypical thoughts or perceptions about him to his detriment by his supervisors and his interviewers for a job.

[61] More importantly, Mr. Turner points to what he describes as various “red flags” in the evidence that involve events or circumstances that are circumstantial but involve contradictions and inconsistencies that can only be rationalized as demonstrating that the selection boards in the two competitions discriminated against him when they made their decisions. He argues that this circumstantial evidence, when taken as a whole, demonstrates the “subtle scent” of discrimination by the board members in their decisions and renders the reasons given by the members of the boards for their decisions as a pretext intended to disguise their discrimination. In essence, Mr. Turner argues that when these “red flags” and contradictions/inconsistencies are taken into consideration as part of the entire circumstances of the complaint, an inference must be drawn that the decisions of the boards had to be at least partly based upon discriminatory factors as discrimination need only to be one factor not the only factor to establish his case.

[62] Mr. Turner argues that while some of these circumstances do not directly relate to the criteria for assessing his candidacy for the positions he applied for in the two open competitions or the process that was supposed to be followed in the competitions, the Tribunal must carefully examine them as part of the entire circumstances of the complaint to determine whether the “subtle scent” of discrimination was present when the boards made their decisions, as discrimination is not a practice which one would expect to see displayed overtly or even practiced intentionally. In the paragraphs that follow from 63 to 85 the “red flags” and contradictions/inconsistencies that Mr. Turner points to as evidence of the “subtle scent” of discrimination are noted.

[63] Though qualification for the job through past positive experience on the job was not part of the criteria or process for choosing qualified candidates in the two open competitions that are the subject of the complaint, Mr. Turner argues that his six successive successful term positions as a term Customs Inspector, when he consistently and uniformly received positive performance evaluations from his supervisors, including supervisors who participated in the boards who found him unqualified in the competitions, belie the idea that he was not qualified to be a full time Customs Inspector. Their

explanations at the hearing for disqualifying him at the interview stages in the competitions, according to Mr. Turner, are inconsistent with their evaluations of him while he was working as an employee and, as such, are really after the fact excuses used to try to justify their decisions. In this context, Mr. Turner argues that the explanations for his disqualifications, on the whole, are “red flags” signifying a pretext for discrimination. For example, Mr. Baird, one of the board members who found him unqualified in his interview in Victoria 7003 on the basis that he lacked requisite qualifications in the area of dealing with difficult situations, teamwork and enforcement experience and knowledge, had previously given him a positive written evaluation for his term work as a Customs Officer under his supervision. Together with Kathleen Pringle, Mr. Baird had previously challenged Mr. Turner to get more enforcement experience and to work more outside and was satisfied in his written evaluation of Mr. Turner, following his fifth term, with his work in Marine, conducting secondary exams, understanding the then newly enacted “Officer Powers and Use of Force” legislation, working with travellers and coworkers, dealing with difficult situations and demonstrating diligence and decisiveness on the job.

[64] Mr. Turner says that not only was he consistently rehired but he was also extended for terms greater than the normal late Spring/Summer/early Fall terms. He was also asked to train employees. Though he did spend a majority of his time at the TRC during his six years of term employment, it was management who assigned him there and he also did work at primary, secondary and Marine locations where his work was also positively evaluated. Mr. Turner submits that in the evaluations of his work his supervisors never raised any significant concerns about his performance or his behavior and character, which was consistently seen by his supervisors and peers as being good, helpful, competent, diligent, upbeat and positive. The explanations given at the hearing for the decisions to disqualify him in the two competitions that are the subject of this complaint, according to Mr. Turner, therefore stand as inconsistent “red flags” and must be viewed, when one looks at all of the evidence, as a pretext for discrimination based upon Mr. Turner’s personal characteristics and the unfounded unfair negative stereotypes associated therewith that had seeped into the minds of the decision makers.

[65] More importantly, Mr. Turner contends that none of the indications in the Klassen emails, about a “perception” that Mr. Turner was sloughing off hard tasks or taking too much sick or family time off were ever raised by anyone, in written or oral form, for him to know about or be able to answer except when Mr. Klassen spoke with him after his last positive written evaluation following his final term and thereafter raised them in the emails to management that Mr. Turner was not copied with. According to Mr. Turner, these actions by Mr. Klassen should be viewed as a “red flag” signifying the “subtle scent” of discrimination as they involve an unfounded “perception” about Mr. Turner that is contradictory to and inconsistent with Mr. Turner’s actual record of work and behaviour on the job as set forth in many positive evaluations.

[66] Mr. Turner argues that the Klassen emails hold the key to the case because these emails painted an unjustified picture of Mr. Turner as a lazy, incompetent, dishonest person which was a “perception” according to Mr. Klassen based upon Mr. Turner allegedly avoiding hard tasks and misusing his sick time. In the view of Mr. Turner, this “perception” was inconsistent with the reality of his work experience and behaviour as per his performance evaluations but consistent with a negative stereotype of the lazy, incompetent, dishonest black male documented in literature produced by Mr. Turner at the hearing concerning anti-black racism as well as the cases referred to in paragraphs 49 and 50 above. Mr. Turner disagreed with the “perception” when he was confronted in the interview by Mr. Klassen after he was given a positive written evaluation by Mr. Klassen that didn’t mention this “perception”. Mr. Turner argues that the sending of the emails are direct evidence of discrimination. He also argues that Mr. Klassen was unable in his evidence at the hearing to properly explain where the “perception” came from and what it was really based upon with respect to Mr. Turner’s actual work experience or behaviour on the job. As such, in Mr. Turner’s view the contents of the emails are unsupported in fact and are a pretext for discrimination.

[67] The Klassen emails were sent, without the knowledge of Mr. Turner, to supervisors who Mr. Turner says, were influenced by the emails in their thought processes in making their decision in Victoria 7003. These same supervisors had previously given Mr. Turner consistently positive evaluations of his work. Mr. Turner says that their decisions were

inconsistent with their previous evaluations and ultimately discriminatory as they were based upon the negative stereotype of the lazy, incompetent black male. He says the unjustified negative stereotype, unsupported by any evidence of laziness or dishonesty by Mr. Turner, was planted in the minds of the decision makers by the emails and seeped into their thinking, however subconsciously, clouding their judgment and resulting in a discriminatory decision that Mr. Turner argues cannot be reasonably explained, except based upon the prejudicial racist negative stereotype about a large black man.

[68] According to Mr. Turner there were other “red flags” and contradictions/inconsistencies in his view of the evidence surrounding the interviews and other matters related to the competitions that Mr. Turner participated in that he says should reasonably give rise to an inference that the decisions made to find him unqualified and disqualify him from proceeding in the two competitions are tinged with the “subtle scent” of discrimination based upon his race, colour, age, size and ethnicity and the compounding effect of the intersection of these factors, including those described in paragraphs 69 to 85 below.

[69] In another prior competition for the job of Customs Inspector in Victoria that Mr. Turner applied for in 2002 after his fourth successful term, referred to in paragraph 12 above, he was initially screened in for an interview but the selection board found him unqualified with a score of 60 which was below the required score of 70. Ms. Kathleen Pringle one of the board members who interviewed him was, according to Mr. Turner, unable in her evidence at the hearing to properly identify how that score was chosen as there was no scoring guide to follow. Further, the selection board found that the use by Mr. Turner of a four years old event in a competency indicated a lack of experience yet a written questionnaire from a competition shortly after expressly provided that events up to five years old were acceptable.

[70] In another prior competition for the job of Customs Inspector in Victoria in 2003 after his fifth successful term, referred to in paragraph 15 above, he was initially screened in for an interview based on the competencies that were used in the competitions that are the subject of this complaint. Mr. Turner was interviewed by Mr. Mark Northcote and Mr. Ron Tarnawski as well as Ms. Kathryn Pringle. Messrs. Northcote and Tarnawski

were also the selection board decision makers in Vancouver 1002. He was found unqualified by the Board in this prior Victoria competition as well. In his evidence at the hearing, Mr. Northcote was, according to Mr. Turner, unable to properly justify his criticisms of Mr. Turner, described in paragraph 17 above of being too much of an advocate for the black American traveller in that event and having poorly written the incident in his written competencies. Mr. Turner also argues that Mr. Northcote's evidence at the hearing criticizing Mr. Turner's idea of using the insured value of goods as a method of valuing them for customs, referred to in paragraph 18 above, was unjustified and contradicted by other witnesses at the hearing including Mr. Baird and Ms. Patel, thereby rendering Mr. Northcote an unreliable witness.

[71] In Victoria 7003, Mr. Baird and Ms. Kathryn Pringle were the decision makers on the selection board and had both received the Klassen emails before the competition. Mr. Baird in his evidence at the hearing claimed that he didn't read either of the Klassen emails before the interview with Mr. Turner while Ms. Pringle said she probably would have read them. Mr. Turner argues that it is inconceivable that Mr. Baird would have not read the emails and that it is contradictory that he said that he would have not read an email unless it was sent to him a second time given that he also said he did not read the second Klassen email.

[72] Mr. Turner contends that he was screened into Victoria 7003 by Mr. Baird and Ms. Pringle, who had both previously given him positive work appraisals, because his written competencies met the requirements for an interview in the competition, yet he was found unqualified on the basis of the same competencies at the interview. Mr. Turner argues that the reasons given by Mr. Baird and Ms. Pringle for not finding him qualified in the competencies of effective interactive communication and teamwork and cooperation were contradictory and inconsistent with the facts as set out in paragraphs 73 to 78 below. Again, Mr. Turner argues that these reasons, unsupported by facts are a pretext for discrimination.

[73] For example, while the selection board found that Mr. Turner had "embellished" facts about his experience as an auxiliary police officer in Toronto, he says he was not provided with that criticism at the interview to be able to respond to and there was no

evidence that he presented himself as anything other than an auxiliary police officer as per his resume that the board had. As well, while the selection board found that he had embellished facts about the number of bond audits he had done, he says that he was not provided with that criticism at the interview and that the board misunderstood that he was referring to the number of audits done by the whole team that season, as he never suggested that he alone had done all of the bond audits.

[74] Further, while the selection board in Victoria 7003 relied on the written competencies as the basis for successfully screening him into this competition (which were the same written competencies that had been used by another board to successfully screen him into the previous competition in Victoria referred to in paragraph 70 above), Mr. Turner argues that the rating guide for this competition explicitly excluded the use of written forms of communication as part of the interview. Yet the written competencies were used by the board to fail him in the competency of effective communications at the interview.

[75] Additionally, Mr. Turner argues that, although the selection board did not raise criticisms of any of his written competencies at the interview, the board used the events described in the written competencies, including the example of the difficult black American traveller, to criticize him of painting others negatively, of embellishing facts to make himself look better at the expense of others and of making derogatory statements about others including the Chief. This, despite the fact that other than Mr. Turner's account of the events, the board had no independent account of the events described in the written competencies at the interview upon which to base their criticisms and to fail him. Moreover, Mr. Turner's account of the events he described in the written competencies were relied on initially by the board to screen him into the competition for an interview.

[76] As well, Mr. Turner argues that the selection board members were unable in their evidence at the hearing to reconcile their criticisms of him for being negative towards others in his written competencies with the fact that the guidelines for preparing the written competencies explicitly encouraged candidates to identify, if accurate, examples that were negative or critical of others.

[77] Also, Mr. Turner argues that the fact that a month after his interview in Victoria 7003 Mr. Baird attempted to contact Ms. Patel who was involved in the black American traveller example and who Mr. Turner had given as a validator for the event, is another “red flag” about the bona fides of the decision to disqualify him based on the interview. By the time that Mr. Baird contacted Ms. Patel, who was then in Quebec, there would have been no point to contact her as Mr. Turner had already been disqualified from the competition.

[78] Finally, Mr. Turner argues that the selection board members in Victoria 7003 went out of their way to criticize him for his alleged shortcomings but didn’t credit him for his abilities and virtues. The fact that his interview performance according to the board was inconsistent with his performance evaluations from them and others is further evidence in his view that he was singled out based on the stereotypical assumptions evidenced in the Klassen emails which tainted the board’s “perception” of his abilities.

[79] The selection board in Vancouver 1002 was made up principally of Messrs. Northcote and Tarnawski who had previously screened Mr. Turner into to a prior competition for an indeterminate position of Customs Inspector in Victoria described in paragraph 70 above in which he failed the interview. Again, in Vancouver 1002 he was screened in for an interview by the selection board based upon the same written competencies he submitted in the two prior Victoria competitions described above. However, at some point in the interview, according to Mr. Turner, Mr. Tarnawski recognized him on the basis of his “voice and presence”. To Mr. Turner this was an overt discriminatory comment related to his race, color and size that was then followed by his disqualification from proceeding further in the competition because he had interviewed for the position of Customs Inspector in Victoria since January 1, 2002 contrary to an eligibility restriction in the job posting. Mr. Turner was not made aware of his disqualification until after the interview by a phone call. At no time during the interview was he challenged by the selection board or criticized by them for any of his written competencies or told that he would be disqualified because of the eligibility restriction.

[80] Mr. Turner, while residing in Victoria applied for Vancouver 1002. He followed the job posting instructions that said that it was open to persons residing or working west of the Canadian Rocky Mountains. Like Mr. Hughes who gave evidence at the hearing, he

understood the restriction related to persons who had interviewed since January 1, 2002 for the position of a Customs Inspector in the Vancouver district where he had not previously interviewed. In previous postings that he had competed for in Victoria there was a restriction that limited applicants to those residing in the Victoria district. Both Messrs. Tarnawski and Northcote testified as to the difficulty that the wording of the restriction caused in Vancouver 1002 describing it as “a nightmare” and “ambiguous”. Mr. Turner feels that their interpretation of the restriction changed during the period after Mr. Turner learned of his disqualification and requested written clarification. After his disqualification by them, on June 1, 2004 the board wrote to Mr. Turner that the restriction applied to anyone who had been interviewed for the Customs Inspector position but referenced the position to the Vancouver District yet Mr. Turner was disqualified even though he had not previously interviewed for the position of Customs Inspector in Vancouver. To Mr. Turner, having initially been screened into the competition and not having been questioned about his written competencies during the interview, the events surrounding his abrupt disqualification after the interview, including the recognition of him by Mr. Tarnawski from a previous competition because of his “voice and presence” and then the changing messages about the eligibility restriction are “red flags” signalling a pretext for discrimination.

[81] Mr. Turner attempted to obtain clarification of the letter he received on June 7, 2004 that was dated June 1, 2004 and postmarked June 4, 2004 as it invited him to do by June 9, 2004. His letter of request for clarification was dated June 7, 2004 and postmarked June 8, 2004 and stamped received on June 11, 2004. Mr. Turner’s letter was not responded to and was marked as received late despite the fact that according to Mr. Turner, Messrs. Northcote and Tarnawski had responded to another candidate whose letter was received after the deadline and despite that fact that they had also accepted written submissions from candidates in the same competition that were received after the deadline, provided they were postmarked by the deadline, contrary to the instructions—again, according Mr. Turner a “red flag” signalling discrimination.

[82] Mr. Turner also argues that he was treated differently than other candidates in Vancouver 1002 based on his race, colour and size, as at least one other candidate who

applied for Victoria 7003 and didn't even get screened in for an interview in that competition was allowed to proceed to an interview in Vancouver 1002 without being disqualified by the eligibility restriction. Mr. Turner argues that the reason given by CBSA for this—that the other candidate never got to an interview in Victoria 7003 and therefore did not actually interview within the time period of the restriction, is implausible and is therefore another “red flag” pointing to discrimination against Mr. Turner in the Vancouver 1002 decision to disqualify him.

[83] Mr. Blaine Wiggins whose situation is described in paragraph 36 above was unsuccessful at the interview stage in Victoria 7003 after being screened into that competition like Mr. Turner and he also applied for Vancouver 1002 and was screened in like Mr. Turner but, unlike Mr. Turner, he was interviewed without being disqualified as a result of the eligibility restriction. Mr. Wiggins was then found to be unqualified by the board after the interview in Vancouver 1002 for reasons that he felt were discriminatory on the basis of his First Nations background. Mr. Turner argues that this demonstrates the discrimination present in the workplace and in the hiring process by CBSA. This prejudicial attitude in the workplace, according to Mr. Turner, also accounted for the discriminatory behaviour by Mr. McKenna towards a black female employee Ms. Lorna Thompson in the situation described in paragraph 37 above.

[84] Mr. Turner also argues that his age was a reason that he was not successful in either of the competitions that are the subject of this complaint. In this regard, he cites the situation described in paragraph 38 above with respect to Mr. Fairweather's comments about encouraging people under 35 years old to apply for positions with CBSA as an example of this prejudicial bias. As well, he cites the student bridging program also described in paragraph 38 above as an example of age discrimination in the workplace as CBSA.

[85] Mr. Turner argues that despite the fact that he was able to ultimately find permanent employment with the Government of Canada at Service Canada he still feels the pain of having been treated in a discriminatory manner in the competitions that are the subject of the complaint in this case. He argues that his race, color, age and size and the negative, stereotypical perception of the black male that had seeped in the minds of the

decision makers were factors in the decisions to unjustly disqualify him from the competitions and deny him the job he was qualified for.

B. Respondent's position

[86] CBSA argues that the evidence establishes that the selection board's decision in Victoria 7003 was demonstrably justifiable based on the fact that Mr. Turner did not meet all the necessary assessment criteria in his interview for the position of Customs Inspector and this had nothing to do with his personal characteristics. CBSA argues that the evidence establishes that the determination by the selection board in Vancouver 1002 was demonstrably justifiable based on the fact that Mr. Turner did not meet the eligibility restriction as he had previously interviewed unsuccessfully for the same position of Customs Inspector in Victoria within the intended ambit of the restriction and this had nothing to do with his personal characteristics. CBSA argues that Mr. Turner has failed to discharge the onus on upon to make out a *prima facie* case and his complaint should therefore be dismissed.

[87] CBSA contends that despite his seasonal-term work as a Customs Inspector, the competitions were open and external and Mr. Turner had to demonstrate that he met the essential qualifications of the position just like every other candidate regardless of employment history. He was not competing against other candidates and the selection boards were not charged with selecting the best available candidate based on merit, rather they were focused entirely on the assessment of each candidate on whether they met the selection criteria during their interviews.

[88] CBSA argues that Mr. Turner failed to meet the qualifications for the position in Victoria 7003 as his work experience was mostly in his preferred location at the TRC and, as such, he lacked sufficient experience outside in secondary and enforcement work which limited the skills that he could demonstrate for a successful assessment by the selection board in the interview.

[89] CBSA argues that very casual approach by Mr. Turner to preparation for the interviews exacerbated this skills deficit and extended to Mr. Turner submitting the same

competency package in both competitions that he had previously submitted in another prior competition that he was unsuccessful in after his interview. The package contained dated information whereas he could have used his more recent experiences in enforcement and Marine to help him in the interview in Victoria 7003 that might have made a difference for him.

[90] CBSA says that the evidence before the Tribunal of Mr. Turner's disqualification in Vancouver 1002 showed that while the eligibility restriction could have been worded better, it was meant to exclude candidates who had previously interviewed and been found unqualified for the position of Customs Inspector with CBSA since January 1, 2002. In this regard CSBA says that Mr. Turner was not differentially treated than four other candidates who were screened out pursuant to the restriction. Further, the whole point of the restriction was valid and intended to avoid a situation that was occurring in competitions where candidates were applying again and again unsuccessfully without the passage of sufficient time to obtain more experience and update their skill set.

[91] CBSA argues that on the evidence adduced at the hearing, Mr. Turner did not make out a case for age discrimination as the selection boards in the competitions would not have been able to determine whether he was marginally above or below 35 years old, the alleged preferential age. Further, there were many candidates that were the same age as Mr. Turner or older who were successful in the competitions despite the fact that the position was an entry level position.

[92] CBSA concedes that, with respect to the first branch of the *Elk Valley* test set out in paragraph 45 above, Mr. Turner possesses the protected characteristics of race, national or ethnic origin, colour, and age, however, CBSA says he failed to establish that he had a disability or that anyone perceived him to have a disability. According to CBSA Mr. Turner failed to adduce any evidence that the selection board member(s), either individually or collectively perceived him to have a disability and, as such he has failed to satisfy the first branch of the test for disability.

[93] CBSA argues that with respect to the second branch of the test set out in paragraph 45 above, Mr. Turner was unable to prove that he experienced an adverse

impact with respect to Vancouver 1002. He was screened out of this particular selection process because he had interviewed unsuccessfully within the intended ambit of the eligibility restriction. Numerous other candidates, in the exact same situation, suffered the same fate according to CBSA. Put another way, CBSA says that Mr. Turner did not experience adverse differential treatment compared to other candidates who had similarly interviewed unsuccessfully since January 1, 2002.

[94] CBSA contends with respect to the allegation of age discrimination in the decisions of the boards in the competitions, Mr. Turner not only did not put his own age into evidence but did not adduce evidence that he was treated adversely in relation to other candidates on the basis of his age. In addition to the foregoing and to paragraph 91 above, CSBA says that a wide variety of different aged candidates were hired during Mr. Turner's terms some older and some younger--the bulk being hired to entry level positions such as Customs Inspector without the requirement of prior experience in the role. If anything, greater life experience was seen as a plus by witnesses who gave evidence at the hearing. The tangible link between CBSA's conduct and a violation of the Act on the basis of age discrimination as required by the third branch of the test set out in paragraph 45 above, has not been established by Mr. Turner on the evidence according to CBSA.

[95] CBSA says that there is no direct evidence of discrimination against Mr. Turner and that the circumstantial case of the "subtle scent" of discrimination put forward by Mr. Turner based on a stereotype of him being a lazy, obese person or lazy, incompetent, dishonest black man is not supported by the evidence before the Tribunal. There is no evidence that any individual, involved in either supervising him or in assessing his candidacy in the competitions, perceived him to be obese or have a disability and the use of the term "lazy" was not one used by anyone at CBSA. Rather, the observation by Mr. Klassen that there was a "perception" at times, not all the time, that Mr. Turner shied away from more difficult tasks was based on legitimate performance issues raised in order to help Mr. Turner succeed in the future. Advising management of the discussion about this that took place between Mr. Turner and Mr. Klassen by way of the emails was a

legitimate human resources exercise, not part of a nefarious scheme to discriminate against Mr. Turner according to CBSA.

[96] CBSA argues that if it wanted to discriminate against Mr. Turner for the reasons he complained about, it could have, but didn't, refuse to rehire him over and over again on a term basis. On the contrary, CBSA says that it consistently gave him feedback on his performance and encouragement to try to help him learn more and perform better--facts inconsistent with a conscious or unconscious conspiracy to deny him employment on the basis of a pejorative negative stereotype. This is the context that should be taken by the Tribunal, according to CBSA, to properly understand the motivation of Mr. Klassen, in privately and informally discussing with Mr. Turner the perception that he felt people had about him shying away from the harder tasks--a discussion that Mr. Turner initially wrote back about in positive terms.

[97] Further, according to CBSA, the Klassen emails should be viewed as essential communications between superintendents tasked with and obliged to monitor employee's performance and provide feedback to subordinates in order to allow for meaningful performance evaluation. Moreover, not placing it in his personal file as part of the official written performance evaluation was intended to benefit Mr. Turner by allowing him to correct the unsatisfactory behaviour without it counting against him.

[98] CBSA says that for the theory of Mr. Turner's case to have merit he would have to prove that differently constituted selection boards with various different members, individually and collectively, either consciously or unconsciously, all found him unqualified for pretextual reasons that intended to disguise a discriminatory purpose. CBSA says that the evidence does not confirm that this took place and that it would be wrong for the Tribunal make such an inference from a complex matrix of unrelated circumstances.

[99] Rather than any discriminatory reasons as alleged by Mr. Turner, CBSA says that the reasons for Mr. Turner's unsuccessful candidacy in Victoria 7003 and the decision of the board to find him unqualified at the interview stage was legitimately tied to performance reasons, including his lack of enforcement experience as a result of almost exclusively being stationed at his preferred location, the TRC, that did not involve true

customs work; his use of the same competency packages from previous unsuccessful applications instead of updating them which might have helped him in the interview and his casual approach to the interview including not bothering to let the persons he cited as validators of events in his competencies know he was using them as validators, to ensure that they agreed with his view of the events. With respect to the last point, both Ms. Nina Patel and Mr. Ken Moore, who participated in the difficult black American traveller event, both gave evidence at the hearing that conflicted with Mr. Turner's evidence in key areas, despite being cited as validators to the event.

[100] Regardless of his experience on the job as a term employee, Mr. Turner's performance at the interview was the focus of the process for him and all other candidates in the open competition in Victoria 7003 and he didn't measure up to the assessment criteria according to CBSA. As well, according to CBSA, his unsuccessful candidacy in Vancouver 1002 was related to a bona fide eligibility restriction that, although poorly worded, applied to him and others who were also disqualified from proceeding in the process in that competition which was also an open competition where prior experience in the job did not matter, except to the extent that it should have helped candidates with experience to perform better in the interview than those without the experience.

[101] CSBA argues that the two unsuccessful applications for an indeterminate Customs Inspector position in Victoria, prior to Victoria 7003, that Mr. Turner participated in before different selection boards (referred to in paragraphs 12 and 15 above) should also be considered by the Tribunal as they are broadly consistent with the assessment of the selection board in Victoria 7003.

[102] CBSA argues that on the evidence adduced at the hearing there were solid non pretextual reasons for the selection board's decision in Victoria 7003 both for embellishing facts and for painting others negatively to benefit himself in his written competencies. This led to him being graded 60 in "Effective Interactive Communications" test category and 40 in the "Teamwork and Cooperation" test category whereas the pass mark was 70. The failure in these two categories of skill were enough to fail him overall without grading the rest of the categories.

[103] In other words, CBSA argues that regardless of any protected characteristics he possessed, Mr. Turner simply failed to perform up to the required standards in the interview in Victoria 7003 to qualify for the job and was disqualified in Vancouver 1002 because he fit into a justifiable eligibility restriction that other candidates also fit into and that the decisions to disqualify him were not made for any discriminatory reasons.

VI. Analysis

[104] In my ruling in this case in 2018 CHRT 1 at paras. 37 to 40, I established the scope of this inquiry to be as follows:

[37] As indicated in my earlier ruling, the allegations at the heart of this inquiry are that the Respondent, in two job competitions (or Selection Processes), discriminated against the Complainant within the meaning of s. 7, on the basis of race, national or ethnic origin, age and the perceived disability of obesity.

[38] It would now seem well recognized that proving such allegations is contingent upon the Complainant establishing that:

- a) He possessed one or more characteristics protected from discrimination under the CHRA;
- b) He experienced an adverse impact with respect to the Selection Processes;
- c) One or more protected characteristics was a factor in the adverse impact.

(Stewart v. Elk Valley Coal Corp., 2017 SCC 30, para. 24)

[39] Ultimately, the above analysis requires the Tribunal to analyse the decision-making processes of the entities that conducted the Selection Processes: namely, the selection boards. In other words, if he possessed protected characteristics, was the Complainant adversely impacted by the actions and decisions of the selection boards, and if so were the protected characteristics a factor in the selection board's actions and decisions?

[40] This analysis does not, strictly speaking, require an assessment by the Tribunal of the Complainant's experience and qualifications in absolute terms, nor even in relation to the other candidates. The Tribunal is not sitting as a selection board, nor is it exercising appellate jurisdiction in respect of the decisions of such boards (see Turner v. Canada (A.G.), 2017

FCA 2, para. 70). Rather, the Tribunal is required to assess the decision-making process of the selection board in order to determine whether the Complainant's protected characteristics or a combination thereof played a role in that decision making process.

[105] On the evidence, I find that items a and b of the test set out in paragraph 38 of the ruling cited in paragraph 104 above are not in issue, as Mr. Turner possesses one or more of the characteristics protected from discrimination under the Act and he did experience the adverse impact of failing to be qualified and hired in the two job competitions that are the subject of his complaint. Item c is in issue and for the reasons that follow I find that CBSA discriminated against Mr. Turner, contrary to section 7 of the Act, on the basis of his race, colour and national or ethnic origin, by disqualifying him in the Victoria 7003 job competition for the indeterminate position of Customs Inspector.

[106] As human beings we are imperfect. Unfortunately, we are all subject to the possibility that we may form prejudicial feelings and attitudes towards other human beings who have different personal characteristics than we have-- not because of anything they have done but because of our conscious or unconscious acceptance of untrue negative stereotypes propagated over time about who they are. Section 7 of the Act is intended to ensure that people having the protected characteristics under the Act are not discriminated against in employment decisions that are made, whether intentionally, unintentionally, consciously or unconsciously, in whole or in part, because of their protected personal characteristics.

[107] As set out in paragraph 48 above, discrimination is not normally displayed overtly or even practiced intentionally. In this case, all of the key witnesses produced by CBSA swore or affirmed in their testimony that they had not discriminated against Mr. Turner on the grounds cited in his complaint. Moreover, in my opinion, none of the examples suggested by Mr. Turner of direct or overt evidence of discrimination in this case, **by themselves**, are either direct or overt evidence of discrimination against Mr. Turner or establish a *prima facie* case of discrimination against CBSA under section 7 of the Act--not the alleged use by Mr. Klassen of the term "rat bastard" in the workplace directed towards Mr. Turner; not the alleged comment at the Vancouver interview by Mr. Tarnawski that he felt or recognized Mr. Turner's "voice and presence"; not the alleged comment by Mr.

Fairweather at a job fair in Victoria encouraging people under 35 years of age to apply for jobs in customs; and not the making or sending of the Klassen emails. As a result, in accordance with the legal principles set out in paragraphs 48 and 54 above, I have had to examine **all** of the circumstances and pieces of evidence, circumstantial and otherwise, including the aforementioned examples, to determine whether **together** an inference can be drawn, on the balance of probabilities, that there existed the "subtle scent" of discrimination in the decisions to disqualify Mr. Turner from the two competitions as alleged by him.

[108] In doing so, I have had to try to determine what was in the minds of the decision makers in the two competitions that took place a long time ago in Victoria and Vancouver when they made their decisions to disqualify Mr. Turner from the competitions, in particular, whether Mr. Turner's protected personal characteristics played a role in their decisions. I am neither a psychiatrist nor a mind reader. As such, trying to figure out what someone else was thinking when he or she made a decision over fifteen years ago is not an easy or certain task, especially when the decision makers, who appear to be honest, fair minded people, have sworn under oath or affirmed that Mr. Turner's protected personal characteristics did not play a role in their decisions to disqualify him from the two competitions. Under these circumstances, for me to find that Mr. Turner's protected personal characteristics played a role in their decisions to disqualify him must either mean that they were untruthful in their evidence and intentionally or consciously discriminated against Mr. Turner or that they unintentionally or unconsciously discriminated against him by accepting untrue negative stereotypes about his personal protected characteristics. As noted above, a complainant is not required to prove intent to establish a *prima facie* case and discrimination may be only one factor of several in an action that is found to be discriminatory under the Act.

[109] I have very carefully observed the witnesses and considered the evidence in this case and have concluded that none of the people that Mr. Turner interacted with at CBSA, relative to the competitions that are the subject of the complaint, intentionally or consciously discriminated against him on the basis of his protected personal characteristics. As noted above, all of the CBSA witnesses swore or affirmed that they

didn't discriminate against Mr. Turner. I don't believe that the witnesses were lying about this. I believe that they truly believe that they did not discriminate against Mr. Turner. Therefore, if they did discriminate against Mr. Turner, I believe that they would have had to have done so unintentionally and unconsciously.

[110] As far as I can determine from reviewing the evidence and observing the witnesses, everyone either seemed to like Mr. Turner personally or at least didn't seem to have any personal animus towards him. In fact, I observed many of the witnesses called by CBSA privately saying hello and exchanging pleasant comments or looks with Mr. Turner during breaks in the proceedings. Further, despite critical comments at the hearing by selection board members about Mr. Turner's qualifications and performance in the two competitions that are the subject of his complaint that led to his disqualifications, the evidence at the hearing by his supervisors and colleagues about Mr. Turner's work evaluations and about his work and his personal habits and traits during his employment with CBSA was almost universally positive and supportive, including recommendations to rehire him to term positions each year for six successive years. Where it was suggested to Mr. Turner by CBSA that he may need to get more experience in certain areas of the operations, I feel that that was done in a mainly positive and constructive manner. In fact, in virtually all of the written evaluations of Mr. Turner, he was commended for his work including his work outside of the TRC in primary and secondary inspections and enforcement. He was also commended for his positive personal demeanor, his willingness to help others and his character.

[111] Not surprisingly, the parties have divergent views on the probative value of the written performance evaluations. CBSA acknowledges that the performance evaluations it conducted and the comments it made about Mr. Turner's work and character during his six successive terms as a term Customs Inspector were positive (other than the verbal interview with Mr. Klassen at the end of the last term) and argues that this shows that it was unbiased in providing these positive evaluations of Mr. Turner and in rehiring him for each of the seasons. However, it also argues that the focus or scope of the inquiry should not be about the evaluations of his past work but rather should be about the decisions of the selection boards to find him unqualified for the indeterminate position of Customs

Inspector in his interview in Victoria 7003 and as a result of the eligibility restriction he fit into in Vancouver 1002. It argues that, as these competitions were open to anyone regardless of their past experience, it was the interviews for screened in candidates that were all important and Mr. Turner simply failed to qualify at the interview stages, regardless of his past positive work evaluations conducted by CBSA for his work as a term Customs Inspector. Mr. Turner takes the position that the stark contrast between the positive written evaluations of him and his work and character on the one hand and the reasons given for the decisions to disqualify him from the two competitions on the other hand are a “red flag” that cannot be reconciled by anything other than signifying a pretext for discrimination based upon the grounds cited in his complaint.

[112] There is no doubt in my mind, on the evidence, that the written evaluations by CBSA of Mr. Turner’s work and character during the six successive seasons were universally positive, as acknowledged by CBSA, and contrast with the reasons given by CBSA for the decision to disqualify him from the Victoria 7003 competition. While, as explained in paragraph 104 above, the focus of this inquiry relates to how and why decisions were made to disqualify Mr. Turner at the interview stages from the two open competitions, where prior experience was not supposed to be a factor, in my view, pursuant to the point made in the last sentence of paragraph 107 above, the written evaluations of Mr. Turner’s work must also be examined in order to properly assess the selection board’ decisions to disqualify Mr. Turner, in order to determine whether there was the “subtle scent” of discrimination in the decisions.

[113] I don’t believe on the evidence that Mr. Klassen intended to discriminate against Mr. Turner because of any of his personal protected characteristics. My view is that Mr. Klassen wanted Mr. Turner to succeed and believed that he was helping Mr. Turner by taking him aside privately to advise him of the alleged “perception” about him shying away from hard tasks, despite the fact that the “perception” did not appear to have a firm foundation factually, either with respect to its existence or with respect to its substance. Regardless, I believe that Mr. Klassen felt that the “perception” of Mr. Turner’s work was real. While I think it was wrong and unfair to Mr. Turner for Mr. Klassen to make and send the emails, I do not believe that Mr. Klassen did this for intentionally discriminatory reasons

but rather because of what he thought he should do as part of the management team to keep other managers informed of his discussion with Mr. Turner. As noted above, although Mr. Turner was shocked and upset about the revelation by Mr. Klassen, for the first time after six seasons of work, of the “perception”, Mr. Turner’s reaction to Mr. Klassen after the interview through an email he sent to him was appreciative and positive and he genuinely appeared to like and respect Mr. Klassen and visa versa. That said, as I will explain later, the raising of the perception with Mr. Turner immediately following the positive written performance evaluation and the making and sending of the emails by Mr. Klassen is nonetheless problematic as the emails may have unconsciously had an impact on the decision makers decision to disqualify Mr. Turner in Victoria 7003, as, in my opinion, they were based upon a perception that did not have a basis in fact but rather on a negative stereotype about a lazy, incompetent, dishonest black male.

[114] Mr. Baird had some limited criticisms of Mr. Turner’s work during the term that he was supervising and evaluating Mr. Turner but most of his comments in his written evaluation then were positive and the few areas that he was critical of were remedied by Mr. Turner by the end of the term according to him. In the interview for Victoria 7003, however, Mr. Baird was critical of Mr. Turner in a number of areas that he testified to at the hearing. He thought Mr. Turner embellished his background and experience as a former auxiliary police officer and in enforcement matters. He also thought he embellished his role in the events described in his written competencies. Above all he thought Mr. Turner was disrespectful and disloyal to his colleagues and supervisors in criticizing them and minimizing their roles compared to his in a number of the events he described in his written competencies. While Mr. Baird was not present at the events described by Mr. Turner and did not check on the accuracy of them with others who were involved, including validators, until after the interview and following his decision, I feel that Mr. Baird’s own work experience and personality led him to believe that some of the things that Mr. Turner described were unfair to colleagues and not accurate. Further, I believe that Mr. Baird felt that some of Mr. Turner’s answers to questions at the interview showed his inexperience and lack of knowledge in some of the duties and responsibilities of a Customs Inspector as a result of spending so much of his time inside the TRC rather than outside doing inspections. I feel that Mr. Baird was a stickler for discipline and loyalty and

set very high standards for communications and teamwork for a Customs Inspector, based upon his own personality, experience and performance in the job. In making his decision to find Mr. Turner unqualified in Victoria 7003, I feel that Mr. Baird believed that Mr. Turner did not measure up satisfactorily to those standards during the interview and for this reason he disqualified him.

[115] If read by him, I don't think the Klassen emails led Mr. Baird to consciously or intentionally decide in Victoria 7003 to find Mr. Turner unqualified on the basis of Mr. Turner's personal protected characteristics. Rather, I believe that the emails, if read by him, may have subconsciously influenced Mr. Baird to think Mr. Turner was not motivated or diligent enough to qualify for the indeterminate position of a Customs Inspector, in part, based upon the negative stereotype of the lazy, incompetent, dishonest black male. While being influenced by the emails in this manner would have been unfair to Mr. Turner because both the existence of and the substance of the "perception" in the emails was unproven and Mr. Turner knew nothing about the emails and had challenged the "perception" when it was raised by Mr. Klassen, Mr. Baird's decision was not intentionally discriminatory in my opinion. That said, as I will explain later, I think Mr. Baird's decision to disqualify Mr. Turner after the interview in Victoria 7003 is nonetheless problematic as it is based unconsciously, in part, on a negative stereotype of the lazy, incompetent, dishonest black male.

[116] I also do not believe that Ms. Kathryn Pringle, who sat on the selection board in Victoria 7003, intentionally or consciously discriminated against Mr. Turner in her decision to find him unqualified at the interview stage in that competition. She had a number of interactions with Mr. Turner prior to the interview in Victoria 7003 including initially hiring him to his first term position in Victoria as a Customs Inspector as referred to in paragraph 7 above as well as giving him a positive evaluation in his fourth term as referred to in paragraph 11 above and also participating in a secondary role in the interview for his unsuccessful application for Victoria 7012 referred to in paragraph 15 above. In her evidence at the hearing, she was far more measured in her criticisms of Mr. Turner's interview in Victoria 7003 than Mr. Baird was in his evidence at the hearing. She relied on notes from the interview and understandably had some difficulty in remembering events

that took place so long ago. While her criticisms at the hearing of Mr. Turner at the interview in Victoria 7003 were similar to Mr. Baird's for embellishing his background as an auxiliary police officer and his role in some of the events he described in his written competencies and for criticizing others while promoting himself, she also acknowledged that she had no direct knowledge of the events he described and as such, his description of the events may have been accurate. She also acknowledged that the instructions for preparing the written competencies encouraged applicants to be forthright and critical of the roles of others, if necessary, in describing the events.

[117] Ms. Kathryn Pringle in her evidence at the hearing indicated that she thought she would have read the Klassen emails. I have exactly the same comments with respect to the effect of the emails on Ms. Kathryn Pringle as my comments on the effect of the emails on Mr. Baird in paragraph 115 above and as well, as I will explain later, I think that her decision to disqualify Mr. Turner after the interview in Victoria 7003 is problematic as it is based unconsciously, in part, on a negative stereotype of the lazy, incompetent, dishonest black male.

[118] I do not believe that Messrs. Northcote and Tarnawski either intentionally, unintentionally, consciously or unconsciously discriminated against Mr. Turner when they decided to disqualify Mr. Turner from Vancouver 1002 on the basis of the eligibility restriction. They had led the interview process in the earlier competition that Mr. Turner applied for in Victoria 7012 as referred to in paragraph 15 and 16 above where they disqualified him at the interview stage for the reasons given by Mr. Northcote in his evidence at the hearing described in paragraphs 17 and 18 above. That competition, however, is not the subject of the complaint. While I share some of the concerns about Mr. Northcote's testimony at the hearing that Mr. Turner raised in argument, as described in paragraph 70 above, I believe that the eligibility restriction, while poorly worded and understandably misunderstood by Mr. Turner, was nonetheless put into place for sound and rational purposes and hence was a valid reason for disqualifying him in Vancouver 1002 when it became known that he had mistakenly been allowed to progress to the interview stage of that competition. While some other candidates, like Mr. Wiggins were not disqualified under the restriction in the same circumstances as Mr. Turner, there were

other candidates who were also disqualified under the restriction like Mr. Turner, albeit without necessarily possessing his protected personal characteristics.

[119] I feel that the handling of Mr. Turner's disqualification by CBSA in Vancouver 1002, including the failure to catch restricted candidates earlier, the equivocation about the reasons behind the restriction and the refusal to answer Mr. Turner's written request for information reveal mistakes, arrogance and callousness. That said, unlike Victoria 7003, the decision makers in Vancouver 1002 were not privy to the Klassen emails and had never supervised Mr. Turner or evaluated his performance on the job previously. Although Mr. Turner had truthfully, from his perspective, answered the question of whether he had applied for the position previously at the interview, upon learning of Mr. Turner's unsuccessful application in Victoria 7003 within the time period of the restriction, Messrs. Northcote and Tarnawski then, in my opinion, lacked the discretion to allow Mr. Turner to continue in the Vancouver 1002 competition. As such, I find that Mr. Turner has failed to prove that the selection board's decision to disqualify him in the Vancouver 1002 competition, on account of the eligibility restriction, was discriminatory, as the inference of discrimination is not, under the circumstances, more probable than other probable inferences--namely that Mr. Turner was caught by a valid eligibility restriction and Messrs. Northcote and Tarnawski had to disqualify him when that fact became apparent to them. Accordingly, I find that none of the grounds of discrimination cited by Mr. Turner in his complaint was a factor in the decision of the selection board in the Vancouver 1002 competition to disqualify him on the basis of the eligibility restriction.

[120] I also find that Mr. Turner's age was not a factor in the decisions of the selection boards to disqualify him in either of the competitions. Mr. Turner, who was in his mid-thirties at the material times in this case, failed to prove that he was discriminated against by CBSA on the basis of his age on the evidence before me. The only evidence concerning age related to the comments by Mr. Fairweather and the bridging program both referred to in paragraph 38 above. In my opinion, neither of these pieces of evidence has any reasonable bearing on or nexus with the reasons of the decision makers for their disqualifications of Mr. Turner either intentionally, unintentionally, consciously, unconsciously or in any intersecting manner with other grounds. As such, I am unable to

make an inference that Mr. Turner's age was more probably than not a factor in the decisions of the selection boards to disqualify him from the competitions. I accept Mr. Fairweather's evidence that his comments were misinterpreted as discouraging older candidates. I also accept the evidence of CBSA that many candidates that were the same age or older than Mr. Turner succeeded in the same type of entry level competitions as this that would normally attract younger applicants and that CBSA values life experience in its employees and candidates for employment.

[121] I also find on the evidence before me that the perceived disability of obesity complained of by Mr. Turner in this matter, on account of his size or weight, was not a factor in the decisions of the selection boards to disqualify Mr. Turner in either of the competitions. Mr. Turner self-described himself as being overweight (as apparently most Canadian adult males are) but no one on the selection boards for the two competitions or anyone else made any mention of it. Nor was there any evidence of Mr. Turner failing to be able to do any tasks or requesting or needing any kind of accommodation for his size or weight. While he is a large man, I did not observe Mr. Turner to be in any way disabled on account of his size or weight during the hearing and heard no evidence of a perception by anyone of Mr. Turner being obese. Certainly nothing of this sort was ever mentioned to him by management in their evaluations or interviews of him or in any other connection. I accept Mr. Klassen's evidence that he didn't even know of the term "rat bastard" in connection with the fictional movie character "fat bastard". I accept the principles set out in paragraphs 51 and 52 above that negative stereotyping of obese people can lead to discriminatory actions against such people in the workplace based upon an untrue perception of obese people as being lazy and in poor health, despite good performance on the job and that discrimination can be caused by multiple intersecting grounds including the perception of obesity. That said, I simply don't feel that Mr. Turner's size or weight, on the evidence before me, leads to a probable inference that this was a factor intentionally, unintentionally, consciously, unconsciously or in any intersecting manner with other grounds in the decisions to disqualify him from the competitions.

[122] As noted in Section V B above, CBSA's position is that Mr. Turner failed Victoria 7003, not because of any pretextual discriminatory reasons related to his protected

personal characteristics but because he simply didn't perform well enough at the interview in two competencies--"Effective Interactive Communications" and "Teamwork and Cooperation". CBSA says he was unprepared at the interview, both in his approach and preparation and because of the lack of knowledge he displayed in responding to questions at the interview, partly as a result of spending too much time in the simpler tasks at the TRC and not enough time in the more difficult tasks in enforcement. It says that he embellished his background as an auxiliary police officer and his role in some of the events described in his written competencies wherein he wrongly attempted to make himself look good at the expense of his colleagues and supervisors. CBSA says that neither screening Mr. Turner into the interview, on the basis of his written competencies and his CV nor giving him positive evaluations of his previous six seasons of work on the job, were important in the process as it was the performance at the interview that really counted.

[123] Contrary to CBSA's view, as noted in paragraph 112 above, I think it is important to consider the prior written evaluations of Mr. Turner's work on the job by his supervisors in order to determine in this case, where circumstantial evidence is key, whether the "subtle scent" of discrimination was present in the decision to disqualify Mr. Turner at the interview stage of Victoria 7003. As stated by Mandamin J. in *Khiamal* at paras 80 to 84:

[80] In *Holden*, the Federal Court of Appeal stated that "as the case law establishes, it is sufficient that the discrimination be a basis for the employer's decision." Discrimination need only be one factor in the Respondent's decision not to promote the Applicant.

[81] The Tribunal is tasked with discerning if discrimination is a factor in the failure to hire. To do so, the Tribunal must consider all of the circumstantial evidence, make findings of facts and determine whether the inference that may be drawn from the facts support a finding of discrimination on the balance of probabilities.

[82] The Tribunal recognized it had to decide if evidence existed to support an inference of discrimination: It stated:

However, there has to be a nexus between the conduct under scrutiny and a prohibited ground of discrimination. The nexus can be inferred through circumstantial evidence, but the inference of discrimination must be more probable than other

possible inferences. Failing that, there may be other workplace, union, and civil remedies open to the Complainant, but the standard needed to establish a human rights complaint will not have been met (emphasis added).

[83] In making an inference, the fact at issue must be proved by other facts. Each piece of evidence need not alone lead to the conclusion. The pieces of evidence, each by themselves insufficient, are combined to provide a basis for the inference that the fact at issue exists. In doing so, care must be taken not to exclude individual pieces if they are being tendered as part of a larger combination. (John Sopinka, *The Law of Evidence in Canada*, 2nd ed., Toronto: Butterworths Canada Ltd., 1999, at para. 2.72, 2.77)

[84] In *Morris v. Canada (Armed Forces)*, [2001] C.H.R.D. No. 41 at paras. 134-144; *aff'd* 2005 FCA 154, the tribunal found that discrimination had occurred based on direct, anecdotal, circumstantial and statistical evidence.

[124] Here are examples of extracts from the written evaluations carried out by CBSA supervisors, Ms. Kathryn Pringle, Mr. Baird and Mr. Klassen of Mr. Turner's work during the fourth, fifth and sixth (and last) seasons that Mr. Turner worked in Victoria as a Customs Inspector in a term capacity that were entered into evidence at the hearing:

From Superintendent Kathryn Pringle:

"Levan, you conduct yourself in a polite and professional manner. You attempt to resolve client's problems before passing them to me."

"You are able to make appropriate referrals and are able to facilitate low risk travelers."

"You are able to communicate effectively both orally and in writing."

"You are always willing to assist me, and others, with extra tasks, without complaint."

"You actively use enforcement databases and your problem solving with various computer systems has been great, as you are able to resolve problems when we have not had support from IT, especially on the weekends."

From Trevor Baird:

"Levan, you have met the goals and objectives."

“You always present yourself in a professional manner, even in difficult circumstances. You have a good understanding of Customs regulations and are able to fulfill cash and commercial roles at the ferry terminal.”

“You have a very good understanding of the Primary process and are able to effectively make quality referrals while facilitating low risk travelers. You are also able to make appropriate decision while conducting secondary exams and processing routine imports.”

“You have a demonstrated ability to effectively communicate with clients and fellow officers You are able to effectively ask questions, listen to responses and respond accordingly. You have the potential to be a very effective interviewer.”

“I have also observed you providing guidance and knowledge to new staff members. You have brought many valid issues forward and changes have been made as a result.”

“You have a very good understanding of Customs examination procedures. You have a good understanding of Officer Powers and Use of Force legislation. You also have a very good understanding of Customs databases.”

In the mid-season appraisal by Superintendent Trevor Baird

“You have an excellent understanding of our primary and secondary procedures. You are able to make quality Customs and Immigration referrals while continuing to facilitate low risk travelers. You have also demonstrated good judgement while dealing with secondary examinations and enforcement activity.”

“You have very effective verbal and written communication skills. You are able to speak effectively with travelers and coworkers as well as conduct secondary interviews.”

“You are willing to take on additional tasks whenever asked or provide assistance to coworkers.”

“You have a very good understanding of Customs Examination procedures. You have been involved in many secondary exams this summer and have worked on gaining exposure within the enforcement side of Customs. You successfully completed Officer Powers and Use of Force training at the beginning of the summer and have demonstrated an understanding of this increased responsibility.”

From Superintendent Klassen

“Levan continues to show year after year quality service to the traveling public and his peers. An example of this is on the job training of new staff. Levan extends courtesy and knowledge to the traveling public so they understand what their rights and obligations are.”

“Levan continues to learn and apply his knowledge At times he has taken on [a] leadership role when the supt. is not on site.”

Regarding his effective communication, “Through observation of Levan he has shown a good ability to be clear and concise with travelers and team members.”

“Levan was willing to take on leadership role when asked and provided guidance to new employees.”

“Levan has a good understanding of the Customs enforcement and OP [Officer Powers]133 process. This can be seen through seizures 811-6002 and two OP incidents (warrant and ASD warn).”

[125] Clearly these are positive comments about Mr. Turner and his work performance on the job consistently over a lengthy period of time. To me, these evaluations starkly contrast with and, as a result, raise serious doubts about the validity of the reasons given for disqualifying him simply because of his performance at the Victoria 7003 interview. That interview likely was concluded within an hour. Mr. Turner was screened in for the interview based upon the acceptance by the decision makers of his written competencies that were later used against him by the decision makers. Adding to my doubts is the fact that the decision makers had been sent the Klassen emails prior to making their decision. As noted in paragraph 113 above, the emails had no clear factual basis or source for the “perception” about Mr. Turner shying away from difficult tasks or abusing sick and family leave. The emails were composed and sent by Mr. Klassen in an unfair manner, without Mr. Turner’s knowledge and without giving him an opportunity to challenge them. They were sent to the supervisors who would ultimately decide his application in Victoria 7003. This, despite Mr. Turner indicating to Mr. Klassen his surprise and disagreement upon hearing about the “perception” from Mr. Klassen for the first time after six successful seasons on the job during which the allegations in the emails were never raised with him.

I believe the emails were read and affected the thinking of Mr. Baird and Ms. Kathryn Pringle in their decision in Victoria 7003 to disqualify Mr. Turner.

[126] In my view, the emails and the reasons given for the decision in Victoria 7003 are linked. Contrary to the contents of the written evaluations of Mr. Turner quoted above and also contrary to my reading of his written competencies and his own evidence and demeanour at the hearing, the emails and the reasons given for the decision invoke an untrue and unproven negative perception of Mr. Turner as a person who is 1) lazy in avoiding difficult tasks, even though there was no real evidence that the TRC was easier than working outside and even though management had control over the allocation and location of work assignments; 2) incompetent in not being knowledgeable about or able to handle properly various enforcement situations, even though the performance evaluations of him clearly indicated he had spent time in enforcement and understood and was able to do the work there and appeared to understand enforcement operations in his evidence before me at the hearing; and 3) dishonest in embellishing his role in various events described in his written competencies to the detriment of others; in his CV and in his sick and family time off, even though the decision makers had no knowledge at the time of their decision of the true facts of the events described in the written competencies, which were supposed to be written frankly including criticisms of his bosses if necessary, according to the rules, and even though there was no evidence that he was untruthful about his role as an auxiliary police officer or about his sick or family time off.

[127] I believe that both the Klassen emails and the reasons for the decision in Victoria 7003 cannot simply be attributed to a poor performance by Mr. Turner at the interview or alternatively to mistakes made by Messrs. Klassen, Baird and Ms. Kathryn Pringle in assessing Mr. Turner at the time of the emails or at the time of the decision. Instead, in taking all of the pieces of evidence and circumstances into account, I believe that an inference can be drawn that is more probable than not, that unintentionally and unconsciously, these supervisors allowed an untrue negative stereotype of the lazy, incompetent, dishonest black male to enter their minds about Mr. Turner, who was virtually the only black male in the employment of CBSA in Victoria at the time. This then became a factor in the making and sending of the emails and the decision of the board to disqualify

Mr. Turner at the interview stage, in my opinion. For me, Mr. Turner's own excellent, knowledgeable evidence at the hearing, together with the contrast between the earlier written evaluations of his work by the decision makers and their more recent evidence at the hearing in trying to explain the reasons for disqualifying him at the interview of Victoria 7003, are too great for me to overlook and as such, I find that unintentional, unconscious discrimination by the board, based upon an untrue negative racist stereotype, was a factor in the decision to disqualify Mr. Turner in Victoria 7003.

[128] In *Parks*, the Panel, which included Abella, J.A., as she then was, in its decision at paragraphs 54, 60 (quoting Justice McLachlin) and 61, wrote as follows about racism in Canada and the subconscious effect it has in perpetuating negative stereotypes about blacks in decision making:

54 I do not pretend to essay a detailed critical analysis of the studies underlying the various reports to which I have referred. Bearing that limitation in mind, however, I must accept the broad conclusions repeatedly expressed in these materials. Racism, and in particular anti-black racism, is a part of our community's psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes. Furthermore, our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes. These elements combine to infect our society as a whole with the evil of racism. Blacks are among the primary victims of that evil.

60 Justice McLachlin recently described both the danger and potential power of bias in the decision-making process ("Stereotypes: Their Uses and Misuses" (Address to the McGill University Faculty of Law Human Rights Forum, November 25, 1992), at p. 11):

Racial stereotypes serve a similar purpose to that served by gender stereotypes. We may decide to reject a person's opinion or refuse their application for employment on the basis of race because it saves us the trouble of really analyzing whether we should be accepting the person's point of view or candidature. I am not suggesting that people consciously decide to apply inappropriate racial stereotypes on the ground that they provide easier solutions than rational decision-making. The matter is more complicated, less express than that. In fact, the racial or sexual stereotypes are there, in our minds, bred by social conditioning and encouraged by popular culture and the media. Sometimes they are embedded in our institutions. We tend to accept them as truths. When faced by

a problem, we automatically apply them because it is natural and easy -- much easier than really examining the problem and coming to a rational conclusion by the processes of thought and listening and evaluation.

61 Others suggest that perceptions based on racial bias are particularly influential in the decision-making process because they tend to filter or even alter the information provided to the decision-maker. [Note 21] Bias shapes the information received to conform with those biases. In doing so, it gives the decision reached, at least in the eyes of the decider, an air of logic and rationality.

[129] In *Knoll*, the Court in its decision dismissing an application for judicial review of a decision of the Ontario Human Rights Tribunal that found that the company had discriminated against its black male employee, Mr. Adams, in its termination of him because of a negative stereotype concerning black men and violence, at paragraph 20 wrote as follows:

[20] The Tribunal referred to an earlier Tribunal decision, *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 46, 2008 HRTO 48 (H.R.T.), in support of the observation accepted by the Tribunal that race plays a very subtle role in society, influencing the actions of people without them realizing or intending that to be the case. At para. 17 of *Sinclair*, the Tribunal stated, "Racialization affects black men in particular, often without the conscious involvement of those making the decisions, through stereotypes of them as physical, violent, and more likely to be criminal." The Tribunal in *Knoll* found that because these attributes are ascribed to black men, black men are over-monitored and scrutinized in our society. (*Knoll*, at para. 46).

[130] In *Francis*, the British Columbia Human Rights Tribunal found that the Ministry of Justice discriminated against its black male employee Mr. Francis on the basis of his race and colour in the manner that it treated him in incidents in his employment that led to his departure based upon a negative stereotype of a "Lazy Black Man", including an incident where a perception of him being slow in his performance was reported to management without providing Mr. Francis an opportunity to respond. At paragraphs 299 to 302 of the decision the Tribunal wrote as follows:

[299] That the June 2012 incident was not accompanied by any directive, corrective action, or discipline is not determinative. The incident between Francis and Manzer escalated after Manzer refused to provide the names of those who were accusing Francis of being slow. It was reasonable for Francis, who was the subject of complaints about his performance, to seek

further information. Rather than provide that information, Manzer reported Francis to management for reacting in a way that may have been overheard by others. In my view, this amounts to a lack of due process when Manzer confronted Francis about possible performance issues but did not give him the necessary information to respond to those issues in any meaningful way. A lack of due process may be evidence of adverse treatment: *Brar*, para. 732.

[300] This kind of targeting and profiling are strong indicators of racial discrimination: *Torres and others v. Langtry Industries* (No. 5) 2009 BCHRT 3 [*Torres*]. As in *Torres*, Francis was singled out, more than other Control officers, for criticism that was not formally documented. The criticism was based largely on gossip, and when confronted, Francis' reaction was then reported to management.

[301] I accept that Manzer may have honestly believed that he was trying to help Francis succeed when he met him in the lunch room. However, it does not follow that his intervention cannot reasonably be tied to Francis' race in circumstances where such an intervention was based on a stereotypical view that did not reflect actual performance. That Manzer, who has the appearance of a white-skinned person, did not perceive his conduct was discriminatory is not determinative.

[302] In *Balikama obo others v. Khaira Enterprises and others*, 2014 BCHRT 107 [*Balikama*], the Tribunal accepted evidence of an expert on anti-Black racism who testified that some discriminatory beliefs held in respect to persons of African descent are stereotypes that Blacks are inferior, stupid, lazy, and incompetent. The expert noted that "the everydayness of racism shows up in employment in that Blacks lack credibility in the workplace, are given the worst jobs and that their concerns are often not addressed": paras. 585 to 6.

It is clear from the evidence of Dr. Bernard that the lot of many Black people in Canada is exceedingly difficult with significant difficulty encountered being accepted as equals in Canadian society. In particular, she pointed to discriminatory beliefs that whites hold with respect to persons of African descent, including stereotypes of Blacks being inferior, stupid, lazy, incompetent, and over-sexed.

Dr. Bernard pointed to the under-employment of Blacks, even highly educated Blacks, in Canada due to lack of recognition of qualifications. She pointed out that, for Blacks, constantly witnessing others experiencing racism was just as damaging to them as if they had experienced it themselves. She referred to this as the "everydayness of racism". She pointed to the fact that the everydayness of racism shows up in employment in

that Blacks lack credibility in the workplace, are given the worst jobs and that their concerns are often not addressed.

[131] As can be seen in the quotes from the cases referred to in paragraphs 127 to 130 above, there are similarities between those cases and this one. Like those cases, this case involves a finding of the subtle scent of discrimination against a black person, based in part, upon an untrue negative racist stereotype that I have inferred in this case, from all of the circumstances presented to me in evidence at the hearing, more probably than not had seeped into the minds of the decision makers in Victoria 7003 and became a factor, unintentionally and unconsciously, in their decision to disqualify Mr. Turner from that competition. As such, I find that Mr. Turner has, on the balance of probabilities, substantiated his complaint, in part. Namely, that CBSA discriminated against him on the grounds of race, colour and national or ethnic origin by disqualifying him from the Victoria 7003 competition, contrary to section 7 of the Act.

VII. Order

[132] The parties attend a case management conference call at a time and date to be determined by the Tribunal, as soon as practicable to the Tribunal and the parties, to discuss the procedure for a hearing on remedies.

Signed by

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
February 11, 2020

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1248/6007

Style of Cause: Levan Turner v. Canada Border Services Agency

Decision of the Tribunal Dated: February 11, 2020

Date and Place of Hearing: May 14 to 17, 2018
May 28 to June 1, 2018
December 10 to 14, 2018
January 14 to 18, 2019
January 28, 2019
September 4 and 5, 2019

Victoria, British Columbia

Appearances:

David Yazbeck, for the Complainant

No one appearing, for the Canadian Human Rights Commission

Graham Stark, for the Respondent